Lordships propose to take, *viz.*, humbly to advise Her Majesty to reverse the judgment of the High Court now under appeal, and the second judgment of the Zillah Judge, and to direct a decree to be made in the suit to the effect of the original decree of the Zillah Judge. The respondents must pay the costs of the litigation in India, and of this appeal.

The 24th November 1874.

Present :

The Hon'ble J. B. Phear, *Judge.*

Lease—Forfeiture—Construction.

Case No. 525 of 1874.

Special Appeal from a decision passed by the Subordinate Judge of Dacca, dated the 20th January 1874, reversing a decision of the Additional Moonsiff of Moonsheegunge, dated the 5th July 1873.

Ram Nursingh Chuckerbutty and others (Plaintiffs), *Appellants,*

versus

Dwarkanath Gangooly and others (Defendants), *Respondents.*

Baboo Kalee Mohun Dass for Appellants.

Baboos Gopal Lall Mitter, Doorga Mohun Dass and *Bama Churn Banerjee* for Respondents.

A condition of forfeiture should not be extended beyond the words in which it is expressed ; unless, perhaps, it is impossible without so extending it to give a reasonable construction to the instrument in which it appears.

I THINK that sitting here as I do now on special appeal, I ought not to disturb the decision of the Lower Appellate Court.

The facts of the case are thus very shortly stated by the Subordinate Judge :—" It appears that in 1229 B.S., the ancestor of the plaintiff leased out the disputed land, which is a very small piece of land adjoining to the bastoobarry of the defendants, and the lease was in the name of Puddo Lochun alone. But the two brothers of Puddo Lochun who were joint in property and family continued to be in possession of the land. In the like manner, the heirs of Puddo Lochun, with the sons and heirs of his two brothers, have been in possession. Soon after the members of the family having increased in number, the sons of Puddo Lochun for sake of convenience having left their sister's sons to enjoy their share in the bastoobarry, removed to some other place, and the sons and heirs of the two brothers of Puddo Lochun are still in their original residence."

It must be added that the suit is brought by the lessors against not only the sons and heirs of the two brothers of Puddo Lochun, who are still living in the original residence, but also against the direct heirs of Puddo Lochun himself. And these latter assert in defence that the property is theirs, and that the other defendants are in possession thereof with their leave and license.

On these facts, and the evidence in the case, the Subordinate Judge has raised the inference of fact that the original pottah was intended by the lessors to be for the benefit jointly of Puddo Lochun, who was alone named as lessee, and his brothers who were jointly in possession of the baree with him. I am not prepared to say that there is any error of law in this conclusion of the Subordinate Judge. The words of the lease, no doubt, if construed strictly, must be taken to mean that the lease was granted to Puddo Lochun himself alone and his immediate personal heirs. But the circumstances of Hindoo society and the mode in which Hindoo property is so commonly held in this country, may very properly justify the conclusion which the Subordinate Judge has drawn from all the facts of the enjoyment of the property under the lease, namely, the conclusion that notwithstanding the narrowness of the words of the lease itself it was intended to operate in favor of Puddo Lochun and his brothers who were living with him. But it seems to me that on this appeal it is not necessary for me judicially to determine this question. The lease undoubtedly according to its terms operates in favor of those of the defendants who are the direct descendants of Puddo Lochun, and they cover, if necessary, the other defendants with the protection of their leave and license. This being so, the only question that is left in the case is the question whether the condition that appears in the lease has the effect on the facts, and in the events which have occurred of putting an end to the lease altogether.

The Lower Appellate Court has not, in express words stated that it has given attention to this point. But the first Court says :—" It has been said that the plain words of the pottah indicate that the grant would fail on Puddo Lochun leaving

"his baree. It was not the intention of "the grantor, that it would also fail on "Puddo Lochun's son and grandson leaving "their baree. I think this argument is not "sound. The grant was made to Puddo "Lochun for ever with a certain condition. "I do not think it was intended that the "grant should fail if the actual grantee "leave his baree, but if his descendants are "entitled to leave that baree, the grant "would not be affected. It appears that "this bit of land was made over to Puddo "Lochun to make it the outer compound "of his baree, and that as it would not be "of much use if the baree be forsaken, the "above condition was introduced in the "pottah. I think as the grant was to "Puddo Lochun, his sons and grandsons, "the condition was also intended to be ap- "plied to Puddo Lochun, his sons and "grandsons, although the words sons and "grandsons were not used in reciting the "condition."

In other words, the condition of forfeiture in terms applies only to Puddo Lochun, but in the opinion of the Moonsiff must be extended to Puddo Lochun's descendants, otherwise the intention of the condition will be frustrated. The condition has been read out to me in the original, and has been translated also by the learned pleaders on both sides, and I think it is quite plain that the words of it apply only to the event of Puddo Lochun leaving the baree. Then it seems to me that the Moonsiff is wrong in the principle upon which he has extended the operation of the condition. It is, I conceive, a well known rule of Courts of equity that a condition of forfeiture should not be extended beyond its words, unless, perhaps, it is impossible to give a reasonable construction to the instrument in which it appears without doing so. And there might in this case be many reasons suggested why the lessor should, when making a condition of this kind, confine it to Puddo Lochun himself. Moreover, an indefinite condition which might rise into operation at any distance of time beyond the period of the grant, would be, I take it, clearly repugnant not only to the principles of Hindoo Law but also to those principles of equity which govern English Courts. On the whole, it appears to me that the Moonsiff was wrong in considering that this condition of forfeiture was such as to come into operation upon the events which have occurred, *i. e.*, not the event of Puddo Lochun leaving the baree, but the event of his sons or descendants leaving the baree. In this view, I think that the lease is still in full operation and effect, and that therefore, as I have already said, the suit must fail not only against Puddo Lochun's direct descendants, but also against the other defendants who, to say the least, are entitled to occupy the baree under cover of leave and license of the first holder.

The appeal must be dismissed with costs.

The 24th November 1874.

Present :

The Hon'ble J. B. Phear, *Judge.*

Rent-suit by Co-sharer—Act VIII (B. C.) 1869, s. 102—Charter Act, s. 15.

Case No. 565 of 1874.

Special Appeal from a decision passed by the Officiating Additional Judge of Twenty-four Pergunnahs, dated the 4th December 1873, *reversing a decision of the Second Moonsiff of Satkhira, dated the 23rd January* 1873.

Mokhoda Soonduree Dassee (Plaintiff), *Appellant,*

versus

Kureem Shaikh and others (Defendants), *Respondents.*

Baboos Hem Chunder Banerjee and *Kalee Mohun Dass* for Appellant.

Baboo Mohinee Mohun Roy for Respondents.

A suit by a sharer in a talook against a ryot for an aliquot part of the rent, wherein plaintiff made her co-sharers defendants, as they had resisted her right to have any share of the rent at all, should be treated as a suit on behalf of all the shareholders collectively.

Where a suit of this nature, in which the rent claimed was Rs. 7 odd annas, had been decreed in plaintiff's favor by the first Court, but was dismissed by the Lower Appellate Court as not maintainable, it was held that although the Lower Appellate Court expressed no opinion as to the rights of the parties, yet the decree had determined questions between parties having conflicting claims to an interest in land within the words of the Rent Law, s. 102.

Where such a case so dismissed came up to the High Court in special appeal, and the respondent was not placed in a disadvantageous position in regard to answering the complaint, the Court felt bound to exercise the power vested in it by the Charter Act, s. 15, and ordered the Lower Appellate Court to try the case on its merits.

THE judgment of the Lower Appellate Court is short, and as it seems sufficiently to set out